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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

KING, FELICIA C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKIHIKO FUJII, YOSHIE YAMASAKI, HIDEO
OOMINAMI, RYUJI OCHIAI, and YUSUKE SHIBUYA

Appeal 2011-001560
Application 10/587,258
Technology Center 1700

Before BRADLEY R. GARRIS, TERRY J. OWENS, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-8, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a coffee composition and a packaged beverage filled with the coffee composition. Claim 1, which claims the coffee composition, is illustrative:

1. A coffee composition having a hydroxyhydroquinone content of from 0 to 0.00005 wt.%.

The References

Behrman	2,430,663	Nov. 11, 1947
Schlichter	3,615,666	Oct. 26, 1971
Stelkens	GB 354,942	Aug. 20, 1931
Sosuke ¹ (as translated)	JP 06-315434	Nov. 15, 1994

The Rejections

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1, 2, 6 and 7 over Stelkens in view of Sosuke, claims 3 and 8 over Stelkens in view of Sosuke and Schlichter, and claims 4 and 5 over Stelkens in view of Sosuke and Behrman.

OPINION

We reverse the rejections. We need to address only the independent claims (1-5). Claims 1 and 4 require a hydroxyhydroquinone (HHQ) content of 0 to 0.0005 wt%, claim 3 requires an HHQ content of 0 to 0.001 wt%, and claims 4 and 5 require no substantial high performance liquid chromatography peak within a range of a relative retention time of from 0.54 to 0.61 with respect to gallic acid used as a reference substance.²

For a suggestion of a coffee composition containing the Appellants' required low amount of HHQ the Examiner relies upon Stelkens and Sosuke (Ans. 3-4).

¹ The Examiner (Ans. 3) and the Appellants (Br. 4) refer to JP 06-315434 to Naruo Noboru and Oyabu Hajime as "Sosuke". For consistency, we likewise do so.

² That peak indicates the presence of HHQ (Spec. ¶ 0023).

Stelkens removes poisonous and distasteful components from coffee by adsorbing them on an adsorbing agent such as activated carbon (p. 1, ll. 27-51).

Sosuke suppresses the astringent taste in coffee by adsorbing from it a polymeric brown-black ingredient onto activated carbon having a 30-100Å average pore radius (¶¶ 0006-7). “[T]he polymeric brown-black ingredient is expected to be a complex reactant of saccharides, various organic acids, proteins and the like, and examples may include a dimer, a trimer and the like of chlorogenic acid that exists in a large amount” (¶ 0018).

Neither Stelkens nor Sosuke mentions HHQ.

The Examiner finds that HHQ is “a poisonous substance in that it has toxic effects on the body such as the cleavage of DNA strands” (Ans. 8). Because the Appellants have not challenged that finding, we accept it as fact. *See In re Kunzmann*, 326 F.2d 424, 425 n.3 (CCPA 1964).

The Examiner argues that one of ordinary skill in the art would treat coffee with activated carbon “until a desired amount of undesirable substances were removed” (Ans. 8). The Examiner, however, has not established that the desired amount of HHQ for preventing cleavage of DNA strands would reduce the HHQ to the levels required by the Appellants’ claims. The Appellants reduce the HHQ to the levels required by their claims for a different purpose, i.e., to suppress generation of hydrogen peroxide in the body (Spec. ¶ 0012).

Thus, we do not sustain the Examiner’s rejection.

DECISION/ORDER

The rejections under 35 U.S.C. § 103 of claims 1, 2, 6 and 7 over Stelkens in view of Sosuke, claims 3 and 8 over Stelkens in view of Sosuke

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and Schlichter, and claims 4 and 5 over Stelkens in view of Sosuke and Behrman are reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED

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